

# North Pathology Associates, PLLP

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November 21, 2001

Re: the proposed Microsoft antitrust settlement

Dear Sirs,

I am taking the time to write to express my deepest concern regarding the proposed settlement between the Justice Department and Microsoft Corporation. To put it right to the point, the settlement which has been proposed is a conduct remedy (and a backward-looking, weak one at that) which is inappropriate and wholly inadequate for a company which has only shown contempt and disregard for similar conduct restrictions in the past.

I need not remind you that Microsoft signed a consent decree in 1995 that prohibited them from tying application software to their monopoly operating system software, which they promptly and completely disregarded in their efforts to drive a smaller and genuinely innovative competitor (Netscape) out of business. They did so knowingly and unrepentantly, and despite being found in violation of antitrust law by both the district and appellate courts for this, they now astoundingly face no penalty of any sort for their actions.

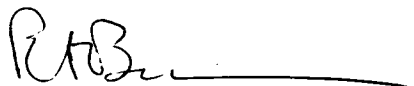
With this history, why on earth would anyone expect Microsoft to abide by the new conduct restrictions in the proposed settlement? What reason has the Department of Justice given Microsoft to fear disregarding these new restrictions in the very same way they ignored the previous ones? Indeed, they have already pressed forward, tying even more of their own proprietary application software into WindowsXP than ever before, while excluding popular open source formats (such as MPEG) and middleware (such as Java).

The argument that this is somehow the best that the Department of Justice can hope for given it's limited resources is either disingenuous or deeply disturbing. The Court of Appeals did not say that the remedy of splitting Microsoft into two companies was inappropriate, only that it needed to be reexamined by the district court in light of apparent prejudice by Judge Jackson. Such a remedy has been amply demonstrated in earlier cases (such as Standard Oil and AT+T) to be remarkably effective in curbing monopolistic practices while allowing competition as well as the divided monopolist to flourish. If the Department of Justice, representing the very people of the United States, truly cannot persevere through one more stage of this case for financial or political or any other reasons, then the rule of law itself is at risk.

Let me make clear that I have no financial interest in the outcome of this case; I am not a disappointed competitor of Microsoft. This letter has been drafted by a some PR firm for me to sign. I am simply a citizen who knows and enjoys competition and who appreciates true innovation and fair competition, both of which I feel will be greatly imperiled in the future under the conditions of this wholly insufficient proposed settlement.

If you would like to contact me for any reason, please feel free to do so at the telephone number or address above.

Sincerely yours,



Peter Benson MD